THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.NO.23676 OF 2005

Dt.7.11.2005

Between:

Toddy Co-operative Society, Boyepalli Village,

Mahabubnagar Mandal, Mahabubnagar District, rep.

By its President, Mr.Manohar Goud

… Petitioner

And

The Deputy Commissioner of Prohibition and Excise,

Mahabubnagar Division, Mahabubnagar,

Mahabubnagar District and another. … Respondents

ORDER:

Heard the learned counsel for the petitioner as well as the learned Government Pleader for Prohibition and Excise.

The petitioner questions the order of the Prohibition and Excise Superintendent, Mahabubnagar, made in Rc.No.B2/1856/2005 dated 22.7.2005 in suspending the licence of Shop No.1 of T.C.S toddy shop, Boyapalli and also in rejecting his application for sending second sample bottle to an independent agency by proceedings dated 24.8.2005. It is stated that an inspection was made in respect of T.C.S toddy Shop No.1 of Boyapalli bearing licence No.42 dated 29.1.2003 valid upto 31.3.2007 and found one M.M.Kamalamma selling toddy on 12.7.2005 and the said toddy was tested with required chemicals which is found free from Chloral Hydrate. But, however, on suspicion the sample was taken and a case was

registered in PCR No.220/2005-06 dated 12.7.2005 and on the next day another case was registered in PCR No.224/2005-06 dated 13.7.2005. It is stated that the said M.M.Kamalamma is not a member or the authorized vendor and therefore the petitioner who is the President of the said TCS Boyapalli is not aware about the drawal of samples and on the allegation that the Society itself is indulging in adulteration of toddy and basing on the opinion of the Chemical Examiner for Prohibition and Excise, the petitioner was arrested on 1.8.2005. Though the petitioner was in judicial custody, he made an application on 11.8.2005 along with the requisite amount to send the second bottle to an independent agency. But both applications have been rejected vide separate orders dated 24.8.2005. The grievance of the petitioner is that the suspension of licence pending enquiry without giving any notice is illegal and unsustainable.

I am not inclined to appreciate the said contention as it is always open for the excise authorities to prevent selling of adulterated toddy as it has been alleged that the Chemical Examiner of the Excise Department has opined that one of the samples of toddy drawn from the shop of the petitioner has been adulterated with Diazepam. Therefore, the suspension of licence of the petitioner is not interfered with and no relief can be granted in that regard. In so far as the rejection of the application of the petitioner to send the second sample bottle to an independent laboratory is concerned, under Rule 24 of Andhra Pradesh Excise (Arrack and Toddy Licences General Conditions) Rules 1969, if the licensee desires that the sample should be sent for analysis to an independent laboratory, he may apply to the Excise Superintendent within seven days of the drawal of sample. In case, where licensee or any one of his Nowkarnama holder was not present at the time of taking of sample, the licensee should apply within seven days from the date of communication of drawal of sample by the Excise Superintendent. It is stated that no communication was sent to the petitioner about the drawal of sample and only he came to know while he was in judicial custody and therefore immediately he has taken steps to file application to send

the second sample bottle vide his application dated 11.8.2005. Under Section 31(1)(e) of A.P.Excise Act, 1968 the licence cannot be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the proposed action. Therefore, I am of the opinion that the rejection of the request of the petitioner for sending the second sample to an independent laboratory is illegal and unsustainable. Accordingly, the proceedings dated 24.8.2005 of the Prohibition and Excise Superintendent, Mahabubnagar, in rejecting the request of the petitioner for sending the second sample to an independent laboratory are hereby set aside. The respondents are directed to send the second sample bottle to an independent agency as per the application of the petitioner dated 11.8.2005 and after receipt of the analyst report, appropriate orders may be passed in accordance with law.

The writ petition is accordingly disposed of. No costs.

(V.ESWARAIAH, J.)

7.11.2005

kpr